

**CHAPTER 10**  
**CRIME VICTIMS COMPENSATION**

**72-1001. Short title.** This chapter may be cited as "The Crime Victims Compensation Act."

**72-1002. Legislative purpose and intent.** The legislature hereby finds, determines and declares that victims of violent crime are often reduced to bereft and destitute circumstances as a result of the criminal acts perpetrated against them, that the financial or economic resources of such victims and their dependents are in many instances distressed or depleted as a result of injuries inflicted upon them by violent criminals.

That the general social and economic welfare of such victims and their dependents is and ought to be intimately affected with the public interest, that the deplorable plight of these unfortunate citizens should not go unnoticed by our institutions and agencies of government.

The legislature hereby further finds, determines and declares that it is to the benefit of all that victims of violence and their dependents be assisted financially and socially whenever possible.

It is the intent of the legislature of this state to provide a method of compensating and assisting those persons within the state who are innocent victims of criminal acts and who suffer injury or death. To this end, it is the legislature's intention to provide compensation for injuries suffered as a direct result of the criminal acts of other persons.

**72-1003. Definitions.** As used in this chapter:

(1) "Claimant" means any of the following claiming compensation under this chapter:

- (a) A victim;
- (b) A dependent of a deceased victim; or
- (c) An authorized person acting on behalf of any of them, including parent(s), legal guardian(s), and sibling(s), of a victim who is a minor.

(2) "Collateral source" means a source of benefits, other than welfare benefits, or advantages for economic loss otherwise compensable under this chapter which the claimant has received or which is readily available to him from:

- (a) The offender;
- (b) The government of the United States or any agency thereof, a state or any of its political subdivisions, or an instrumentality of two (2) or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this chapter;
- (c) Social security, medicare, and medicaid;
- (d) Worker's compensation;
- (e) Wage continuation programs of any employer;

(f) Proceeds of a contract of insurance payable to the claimant for loss which was sustained because of the criminally injurious conduct; or

(g) A contract, including an insurance contract, providing hospital and other health care services or benefits for disability. Any such contract in this state may not provide that benefits under this chapter shall be a substitute for benefits under the contract or that the contract is a secondary source of benefits and benefits under this chapter are a primary source.

(3) "Commission" means the industrial commission.

(4) "Criminally injurious conduct" means intentional, knowing, or reckless conduct that:

(a) Occurs or is attempted in this state or occurs outside the state of Idaho against a resident of the state of Idaho and which occurred in a state which does not have a crime victims compensation program for which the victim is eligible as eligibility is set forth in this statute;

(b) Constitutes an act of terrorism as defined by 18 U.S.C. 2331, committed outside the United States against a resident of this state;

(c) Results in injury or death; and

(d) Is punishable by fine, imprisonment, or death or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle except when intended to cause personal injury or death; provided that criminally injurious conduct shall include violations of the provisions of section 18-4006 3(b), 18-8004, 18-8006, 18-8007, 67-7027, 67-7034 or 67-7035, Idaho Code.

(5) "Dependent" means a natural person who is recognized under the law of this state to be wholly or partially dependent upon the victim for care or support and includes a child if under the age of eighteen (18) or incapable of self-support and unmarried and includes a child of the victim conceived before the victim's death but born after the victim's death, including a child that is conceived as a result of the criminally injurious conduct.

(6) "Injury" means actual bodily harm or disfigurement and, with respect to a victim, includes pregnancy, venereal disease, mental or nervous shock, or extreme mental distress. For the purposes of this chapter, "extreme mental distress" means a substantial personal disorder of emotional processes, thought or cognition which impairs judgment, behavior or ability to cope with the ordinary demands of life.

(7) "Victim" means a person who suffers injury or death as a result of:

(a) Criminally injurious conduct;

(b) His good faith effort to prevent criminally injurious conduct; or

(c) His good faith effort to apprehend a person reasonably suspected of engaging in criminally injurious conduct.

(8) "Welfare benefits" as used in subsection (2) of this section, shall include sums payable to or on behalf of an indigent person under chapter 35, title 31, Idaho Code.

**72-1004. Powers and duties of commission.** (1) The commission shall:

(a) Adopt rules to implement this chapter in compliance with chapter 52, title 67, Idaho Code;

(b) Prescribe forms for applications for compensation; and

(c) Determine all matters relating to claims for compensation.

(2) The commission may:

(a) Request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the commission to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this chapter;

(b) Subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(c) Take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(d) Require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this chapter and the procedure for applying for compensation under this chapter;

(e) Require that any person contracting directly or indirectly with an individual formally charged with or convicted of a qualifying crime for any rendition, interview, statement, or article relating to such crime to deposit any proceeds owed to such individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime or any surviving dependents of the victim, if such individual is convicted of that crime, to be held for such period of time as the commission may determine is reasonably necessary to perfect the claims of the victims or dependents. If, after all funds due the victim have been paid to the victim under this section, there remain additional funds in the escrow account, such funds shall be returned to the crime victims compensation account; and

(f) Require claimants to sign a release and provide information to determine eligibility for compensation under this chapter. Any information received by the commission

pursuant to this subsection shall be kept confidential except as provided in section 72-1007, Idaho Code.

**72-1005. Rehabilitation of victims.** The commission shall refer victims who have been disabled through criminally injurious conduct and who are receiving benefits under this chapter to an appropriate treatment facility or program, including mental health counseling and care. If the referral is to the division of vocational rehabilitation, the division shall provide for the vocational rehabilitation of the victims under its rehabilitation programs to the extent funds are available under such program.

**72-1006. Attorneys' fees.** (1) The commission may grant attorneys' fees to attorneys for representing claimants before the commission. Any attorney's fee granted by the commission shall be in addition to compensation awarded the claimant under this chapter.

(2) The commission may regulate the amount of the attorney's fee in any claim under this chapter when an attorney is representing a claimant.

(3) In no claim or case may attorney fees in excess of five percent (5%) of the amount paid to a claimant or on his behalf be paid directly or indirectly to a claimant's attorney.

**72-1007. Public inspection and disclosure of commission's records.** The information and records the commission maintains in its possession in the administration of this chapter shall be kept confidential and are exempt from public disclosure under chapter 3, title 9, Idaho Code, provided however:

(1) During the commission's regular office hours any claimant, or his attorney or authorized representative, may examine all files maintained by the commission in connection with his application for compensation;

(2) Upon an adequate showing to the court in a separate civil or criminal action that the specific information or records are not obtainable through diligent effort from any independent source, the court may inspect such records in camera to determine whether the public interest in disclosing the records outweighs the public or private interest in maintaining the confidentiality of such records;

(3) Information and records maintained by the commission may be disclosed to public employees and officials in the performance of their official duties; and

(4) Information and records maintained by the commission may be disclosed to health care providers who are:

(a) Treating or examining victims claiming benefits under this chapter; or

(b) Giving medical advice to the commission regarding any claim.

**72-1008. Limitation of benefit entitlements to proportionate share of available funds.** Claimants receiving benefits under this chapter are not granted an absolute entitlement to benefits. Benefits must be paid in accordance with the amount of the legislative appropriation. If the commission determines at any time that the appropriated funds for a fiscal year will not be an amount that will fully pay all claims, the commission may make appropriate proportionate reductions in benefits to all claimants. Such reductions do not entitle claimants to future retroactive reimbursements in future fiscal years unless the legislature makes appropriations for such retroactive benefits.

**72-1009. Crime victims compensation account.** The crime victims compensation account is hereby established in the dedicated fund. Moneys shall be paid into the account as provided by law. Moneys in the account may be appropriated only for the purposes of this chapter, which shall include administrative expenses.

**72-1010. Receipt of funds.** The commission may adopt appropriate rules in order to receive federal funds under federal criminal reparation and compensation acts, or to receive grants, gifts or donations from any source.

**72-1011. Penalty for fraudulently obtaining benefits.** Any person who knowingly makes a false claim or a false statement or uses any other fraudulent device in connection with any claim is guilty of theft as provided in section 18-2403, Idaho Code, and upon conviction shall, in addition to being punished as provided in chapter 24, title 18, Idaho Code, forfeit and repay any compensation paid under this chapter.

**72-1012. Application for compensation.** An applicant for an award of compensation may apply in writing in a form that conforms substantially to that prescribed by the commission.

**72-1013. Informal hearings.** The commission may hold informal hearings in order to make determinations regarding the compensability of a claim. At such hearings, the commission may subpoena witnesses and documents as set forth in section 72-709, Idaho Code. Hearings held under this section are not considered contested case hearings under the Idaho administrative procedures act. However, the commission shall adopt rules regarding the commission's informal hearing procedures.

**72-1014. Evidence of condition.** (1) The commission may require the claimant to supplement the application with any reasonably available medical reports or other documents relating to the injury or condition for which compensation is claimed. Failure

to provide the requested supporting documents or reports may result in the denial of the claimant's application for compensation or claim for payment. Health care providers are authorized to submit directly to the commission, pursuant to the claimant's original release as provided in the application for compensation, any information that is required to support a claimant's application or that is necessary to process a claim for payment.

(2) If the physical or mental condition of a victim or claimant is material to a claim, the commission may order the victim or claimant to submit from time to time to an examination by a physician or other licensed health professional or may order an autopsy of a deceased victim. The commission shall pay for such examination or autopsy. The order shall specify the time, place, manner, conditions, and scope of the examination or autopsy and the person by whom it is to be made and shall require the person to file with the commission a detailed written report of the examination or autopsy. The report shall set out his findings, including results of all tests made, diagnoses, prognoses, and other conclusions and reports of earlier examinations of the same conditions. On request of the person examined, the commission shall furnish a copy of the report to him. If the victim is deceased, the commission, on request, shall furnish a copy of the report to the claimant.

**72-1015. Enforcement of commission's orders -- Improper assertion of privilege.** If a person refuses to comply with an order of the commission or asserts a privilege to withhold or suppress evidence relevant to a claim, except privileges arising from the attorney-client relationship or counselor-client relationship, the commission may make any just order, including denial of the claim.

**72-1016. Limitations on awards.** (1) Compensation may not be awarded unless the claim is filed with the commission within one (1) year after the day the criminally injurious conduct occurred causing the injury or death upon which the claim is based. The time for filing a claim may be extended by the commission for good cause shown.

(2) Compensation may not be awarded to a claimant who is the offender or an accomplice of the offender or to any claimant if the award would unjustly benefit the offender or accomplice.

(3) Compensation may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within seventy-two (72) hours after its occurrence or the commission finds there was good cause for the failure to report within that time.

(4) In order to be entitled to benefits under this chapter, a claimant must fully cooperate with all law enforcement agencies and prosecuting attorneys in the apprehension and prosecution of the offender causing the criminally injurious conduct. The commission,

upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies or prosecuting attorneys, may deny or reconsider and reduce an award of compensation.

(5) Compensation otherwise payable to a claimant shall be reduced or denied to the extent the compensation benefits payable are or can be recouped from collateral sources.

(6) Persons serving a sentence of imprisonment or residing in any other public institution which provides for the maintenance of such person are not entitled to the benefits of this chapter.

(7) (a) Compensation may be denied or reduced if the victim contributed to the infliction of death or injury with respect to which the claim is made. Any reduction in benefits under this subsection shall be in proportion to what the commission finds to be the victim's contribution to the infliction of death or injury.

(b) Compensation otherwise payable to a claimant shall be reduced by fifty percent (50%) if at the time the injury was incurred claimant was engaged in a felony or was in violation of section 18-8004 or 67-7034, Idaho Code, and compensation otherwise payable may be further reduced pursuant to regulation of the industrial commission if claimant's actions contributed to the injury.

**72-1017. Tentative award of compensation.** If the commission determines that the claimant will suffer financial hardship unless a tentative award is made and it appears likely that a final award will be made, an amount may be paid to the claimant, to be deducted from the final award or repaid by and recoverable from the claimant to the extent that it exceeds the final award.

**72-1018. Award of compensation.** (1) The commission shall award compensation benefits under this chapter, if satisfied by a preponderance of the evidence that the requirements for compensation have been met.

(2) An award may be made whether or not any person is prosecuted or convicted. Proof of conviction of a person whose acts give rise to a claim is conclusive evidence that the crime was committed unless an application for rehearing or an appeal of the conviction is pending or a rehearing or new trial has been ordered.

(3) The commission may suspend the proceedings pending disposition of a criminal prosecution that has been commenced or is imminent and may make a tentative award under section 72-1017, Idaho Code.

**72-1019. Compensation benefits.** (1) A claimant is entitled to weekly compensation benefits when the claimant has a total actual loss of wages due to injury as a result of criminally injurious conduct. During the time the claimant seeks such weekly benefits, the claimant, as a result of such injury, must have no reasonable

prospect of being regularly employed in the normal labor market. The weekly benefit amount is sixty-six and two-thirds percent (66 2/3%) of the wages received at the time of the criminally injurious conduct, subject to a maximum of one hundred seventy-five dollars (\$175). Weekly compensation payments shall be made at the end of each two (2) week period. No weekly compensation payments may be paid for the first week after the criminally injurious conduct occurred, but if total actual loss of wages continues for one (1) week, weekly compensation payments shall be paid from the date the wage loss began. Weekly compensation payments shall continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market.

(2) The commission may order payment of reasonable expenses actually incurred by the claimant for reasonable services by a physician or surgeon, reasonable hospital services and medicines, mental health counseling and care, and such other treatment as may be approved by the commission for the injuries suffered due to criminally injurious conduct. Payment for the costs of forensic and medical examinations of alleged victims of sexual assault performed for the purposes of gathering evidence for possible prosecution, after collections from any third party who has liability, shall be made by the commission. The commission shall establish a procedure for summary processing of such claims.

(3) (a) The dependents of a victim who is killed as a result of criminally injurious conduct are entitled to receive aggregate weekly benefits amounting to sixty-six and two-thirds percent (66 2/3%) of the wages received at the time of the criminally injurious conduct causing the death, subject to a maximum of one hundred seventy-five dollars (\$175) per week. Weekly compensation payments shall be made at the end of each two (2) week period.

(b) Benefits under subsection (3)(a) of this section shall be paid to the spouse for the benefit of the spouse and other dependents unless the commission determines that other payment arrangements should be made. If a spouse dies or remarries, benefits under subsection (3)(a) shall cease to be paid to the spouse but shall continue to be paid to the other dependents so long as their dependent status continues.

(4) Reasonable funeral and burial expenses of the victim, not exceeding two thousand five hundred dollars (\$2,500), shall be paid if all other collateral sources have properly paid such expenses but have not covered all such expenses.

(5) (a) Compensation payable to a victim and all of the victim's dependents in cases of the victim's death, because of injuries suffered due to an act or acts of criminally injurious conduct involving the same offender and occurring within a six (6) month period, may not exceed twenty-five thousand dollars (\$25,000) in the aggregate.

(b) The limitation of subsection (5)(a) of this section is



subject to the further limitation that payments for mental health treatment received as a result of the victim's injury may not exceed two thousand five hundred dollars (\$2,500) unless the industrial commission finds extenuating circumstances pursuant to regulation of the industrial commission.

(6) Compensation benefits are not payable for pain and suffering or property damage.

(7) (a) A person who has suffered injury as a result of criminally injurious conduct and as a result of such injury has no reasonable prospect of being regularly employed in the normal labor market, who was employable but was not employed at the time of such injury, may in the discretion of the commission be awarded weekly compensation benefits in an amount determined by the commission not to exceed one hundred fifty dollars (\$150) per week. Weekly compensation payments shall continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market or for a shorter period as determined by the commission. The claimant shall be awarded benefits as provided in subsection (2) of this section.

(b) The dependents of a victim who is killed as a result of criminally injurious conduct and who was employable but not employed at the time of death, may, in the discretion of the commission, be awarded, in an aggregate amount payable to all dependents, a sum not to exceed one hundred fifty dollars (\$150) per week which shall be payable in the manner and for the period provided by subsection (3)(b) of this section or for such shorter period as determined by the commission. The claimant shall be awarded benefits as provided in subsection (4) of this section.

(c) Compensation payable to a victim or a victim's dependents under this subsection may not exceed twenty thousand dollars (\$20,000), and the limitations of subsection (6) of this section apply to compensation under this subsection (7).

(8) Amounts payable as weekly compensation may not be commuted to a lump sum and may not be paid less frequently than every two (2) weeks.

(9) (a) Subject to the limitations in subsection (9)(c) of this section, the spouse, parent, child, brother, or sister of a victim who is killed as a result of criminally injurious conduct is entitled to reimbursement for mental health treatment received as a result of the victim's death.

(b) Subject to the limitations in subsection (9)(c) of this section, the spouse, parent, child, brother or sister of a victim who is sexually assaulted is entitled to reimbursement for mental health treatment received as a result of the crime.

(c) Total payments made under subsections (9)(a) and (9)(b) of this section, may not exceed five hundred dollars (\$500)

for each person or one thousand five hundred dollars (\$1,500) for a family.

(d) With regard to claims filed pursuant to this section, in order for family members of victims of crime to be entitled to benefits, the victim of the crime must also have been awarded benefits for the crime itself.

(10) A claimant or a spouse, parent, child or sibling of a claimant or victim may be reimbursed for his or her expenses for necessary travel incurred in connection with obtaining benefits covered pursuant to this chapter and in accordance with rules of the commission.

**72-1020. Award not subject to execution, attachment, garnishment, or assignment -- Exception.** (1) An award is not subject to execution, attachment, garnishment, or other process.

(2) An assignment or agreement to assign a right to compensation in the future is unenforceable except:

(a) An assignment of a right to compensation for work loss to secure payment of maintenance or child support; or

(b) An assignment of a right to compensation to the extent that the benefits are for the cost of products, services, or accommodations necessitated by the injury or death on which the claim is based and are provided or to be provided by the assignee.

**72-1021. Reconsideration and review of commission's decisions.** (1) The commission, on its own motion or on request of the claimant, may reconsider a decision making or denying an award or determining its amount. The commission shall reconsider at least annually every award being paid in installments. An order on reconsideration of an award may not require refund of amounts previously paid unless the award was obtained by fraud.

(2) The right of reconsideration does not affect the finality of a commission decision.

**72-1022. No appeal.** There shall be no right of appeal from a final determination of the commission.

**72-1023. Subrogation.** (1) If a claimant seeks compensation under this chapter and compensation is awarded, the account is entitled to full subrogation against a judgment or recovery received by the claimant against the offender or from or against any other source for all compensation paid under this chapter. The account's right of subrogation shall be a first lien on the judgment or recovery. If the claimant does not institute the action against the offender or against another source from which payment may be recovered for benefits compensable under this chapter within one (1) year from the date the criminally injurious conduct occurred, the commission may institute the action in the name of

the claimant or the claimant's personal representative.

(2) If the claimant institutes the action, the commission shall pay a proportional share of costs and attorneys' fees if it recovers under its subrogation interest.

(3) If the commission institutes the action in the name of the claimant or the claimant's personal representative and the recovery is in excess of the amount of compensation paid to the claimant and costs incurred by the account in pursuit of the action, the excess shall be paid to the claimant.

(4) If a judgment or recovery includes both damages for bodily injury or death for which the commission has ordered compensation paid under this chapter and damages for which the commission has not ordered compensation paid, then the account's subrogation interest shall apply only to that proportion of the judgment or recovery for which it has paid compensation. In a civil action in a court of this state arising out of criminally injurious conduct, the judge, on timely motion, shall direct the jury to return a special verdict indicating separately the amounts of the various items of damages awarded. A claimant may not make recoveries against the offender or other source from which payment can be recovered for benefits compensable under this chapter in such a way as to avoid and preclude the account from receiving its proper subrogation share as provided in this section. The commission shall order the release of any lien provided for in subsection (1) of this section upon receipt of the account's subrogation share.

(5) Moneys received under the provisions of this section shall be paid to the account.

#### **72-1024. Effect of award on probation and parole of offender.**

(1) When placing any convicted person on probation, the court may set as a condition of probation the payment to the account of an amount equal to any benefits paid from the account to or for the benefit of a victim or a victim's dependents. The court may set a repayment schedule and modify it as circumstances change.

(2) Payment of the debt may be made a condition of parole subject to modification based on a change in circumstances.

#### **72-1025. Fines -- Reimbursements -- Priority -- Disposition.**

(1) In addition to any other fine which may be imposed upon each person found guilty of criminal activity, the court shall impose a fine or reimbursement according to the following schedule, unless the court orders that such fine or reimbursement be waived only when the defendant is indigent and at the time of sentencing shows good cause for inability to pay and written findings to that effect are entered by the court:

(a) For each conviction or finding of guilt of each felony count, a fine or reimbursement of not less than fifty dollars (\$50.00) per felony count;

(b) For each conviction or finding of guilt of each misdemeanor count, a fine or reimbursement of twenty-five dollars (\$25.00) per misdemeanor count;

(c) In addition to any fine or reimbursement ordered under subsection (a) or (b) above, the court shall impose a fine or reimbursement of not less than two hundred dollars (\$200) per count for any conviction or finding of guilt for any sex offense, including, but not limited to, offenses pursuant to sections 18-1506, 18-1507, 18-1508, 18-1508A, 18-6101, 18-6108, 18-6605 and 18-6608, Idaho Code.

(2) The fine or reimbursement imposed under the provisions of this section shall have priority over all other judgments of the court, except an order to pay court costs.

(3) Notwithstanding the provisions of section 19-4705, Idaho Code, the fines or reimbursements imposed under the provisions of this section shall be paid into the crime victims compensation account.